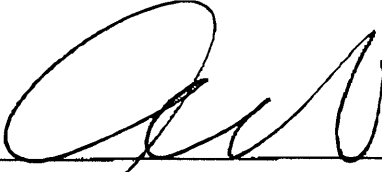


THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 10 day of FEB 2006, before me, the undersigned notary public, personally appeared DAVID FERRERIA proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☒ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that (he/she) signed it voluntarily for its stated purpose.
~~(as attorney in fact for _____).~~



Notary Public
(official seal)
My commission expires:

MICHAEL P. ANGELINI
NOTARY PUBLIC
MY COMMISSION EXPIRES: DECEMBER 17, 2010

CERTIFICATE OF MAILING

I hereby certify that on this 14 day of February, 2006, I did deposit in the United States Post Office, with postage fully prepaid thereon, a copy of the above and foregoing
DEFENDANT DAVID L. FREDRICK'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT; AFFIDAVIT OF DAVID L. FREDRICK addressed to:

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EXHIBIT D

Consolidated Opposition to Defendant David L. Fredrick's Motion to Dismiss Plaintiff's Complaint and Defendant Patricia Hough's, and Defendant AAIMG's Motion to Dismiss the Second, Third, Fifth and Sixth Claim filed by Plaintiff St. Matthew's University (Cayman Ltd.) on March 7, 2006

COPY

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**ST. MATTHEW'S UNIVERSITY
(CAYMAN) LTD., a Cayman Islands
company,**

Plaintiff,

vs.

**SABA UNIVERSITY SCHOOL OF
MEDICINE FOUNDATION, a
Netherland-Antilles company, et al,**

Defendants.

Case No. CV-S-05-0848-BES

**CONSOLIDATED OPPOSITION TO
DEFENDANT DAVID L. FREDRICK'S,
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT, AND DEFENDANT
PATRICIA HOUGH'S, AND
DEFENDANT AAIMG'S MOTION TO
DISMISS THE SECOND, THIRD, FIFTH
AND SIXTH CLAIM**

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CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY _____ DEPUTY

1 Plaintiff ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD. ("ST. MATTHEW'S"),
2 by and through their counsel of record, hereby makes a consolidated response and
3 opposition to (1) Defendant David Fredrick's ("FREDRICK") MOTION TO DISMISS
4 PLAINTIFF'S COMPLAINT (pursuant to federal rules of civil procedure 12(b)(2), (3) &
5 (6), dated February 14, 2006; (2) Defendant Patricia Hough's ("HOUGH") MOTION TO
6 DISMISS THE SECOND, THIRD, FIFTH AND SIXTH CLAIM (pursuant to federal rules
7 of civil procedure 12(b)(3)&(6)) dated February 14, 2006; and (3) Defendant Association
8 of American International Medical Graduates, Inc.'s ("AAIMG") MOTION TO DISMISS
9 THE SECOND, THIRD, FIFTH AND SIXTH CLAIM (pursuant to federal rules of civil
10 procedure 12(b)(3) & (6)) dated February 14, 2006. Defendants FREDRICK, HOUGH
11 and AAIMG (collectively, the "Defendants") all make substantially similar arguments
12 under 12(b)(3)&(6), and only Defendant FREDRICK makes an argument under 12(b)(2).
13 In the interests of economy, Plaintiff has consolidated its oppositions into the one
14 present document.

15 ///

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I. THE COURT HAS PERSONAL JURISDICTION OVER DEFENDANT**FREDRICK**

In light of the facts alleged, which must be taken as true, and as conflicting averments by Defendant FREDRICK must be resolved in favor of Plaintiff, Defendant FREDRICK's motion to dismiss for lack of personal jurisdiction (for the immediate argument, the "Motion") must fail.

The minimal and carefully crafted Affidavit of Defendant FREDRICK in support of his motion to dismiss is insufficient to controvert the allegations of Plaintiff's First Amended Complaint ("FAC") such that personal jurisdiction can be defeated. His "categorical" denials are not statements of evidentiary fact but conclusory ones, and do not serve to contradict ST. MATTHEW'S allegations. His only statement of fact, regarding the number of visits made to Nevada, in no way counters the allegations of his wrongdoing which establish personal jurisdiction over him.

However, even should FREDRICK's unsubstantiated "categorical" denials be given evidentiary weight, FREDRICK's Motion must fail. At the very least, his affidavit leaves uncontroverted the allegations that Defendant FREDRICK knew of the tortious acts of his alleged co-conspirators and the effects of such acts in the State of Nevada, and that he (or his co-conspirators) acted to maintain the corporate entity Defendant AAIMG with State of Nevada – either of which are sufficient to establish this Court's personal jurisdiction over him.

Furthermore, Plaintiff ST. MATTHEW'S herein provides evidence disproving such denials, and establishing that Defendant FREDRICK was actually involved in, conspired to, and/or aided and abetted and provided the means to commit the crimes and other wrongdoings alleged in ST. MATTHEW'S FAC. These facts, which directly contradict FREDRICK'S statements, must be resolved in favor of ST. MATTHEW'S.

Lastly, should the record be found insufficient to establish the personal jurisdiction of this Court over Defendant FREDRICK, Plaintiff requests the right and opportunity to conduct discovery directed toward evidence of such a nature.

A. Standard of Review: Facts Alleged Must Be Taken as True, and Conflicts of Fact Must Be Resolved in Favor of Plaintiff.

Where, as here, the Court receives only written submissions, a plaintiff need only make a prima facie showing of jurisdiction to avoid a defendant's motion to dismiss for lack of personal jurisdiction. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 268 (9th Cir. 1995); *Data Disc, Inc. v. Sys. Tech. Assocs.*, 557 F.2d 1280, 1285 (9th Cir. 1977). In determining whether Plaintiff has met this burden, uncontroverted allegations in Plaintiff's FAC must be taken as true, and conflicts between the facts contained in the parties' supporting affidavits must be resolved in ST. MATTHEW'S favor. *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). In fact, when considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the court must not weigh the conflicting assertions of the parties. *Compuserve, Inc. v. Patterson*, 89 F.3d 1257, 1262 (6th Cir. 1996). Rather, all relevant factual disputes must be resolved in favor of ST. MATTHEW'S as the party invoking the Court's jurisdiction. *Logan Productions, Inc. v. Optibase, Inc.*, 103 F.3d 49, 52 (7th Cir. 1996) (*citing Turnock v. Cope*, 816 F.2d 332, 333 (7th Cir. 1987)).

To establish that personal jurisdiction over Defendant FREDRICK is proper, ST. MATTHEW'S must show that (1) Nevada's long-arm statute confers personal jurisdiction over FREDRICK; and (2) the exercise of jurisdiction comports with the constitutional principles of due process. *See Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002), *citing Omeluk*, 52 F.3d at 269. Nevada's long-arm statute permits the exercise of jurisdiction to the same extent as the Constitution. Nev. Rev. Stat. §14.065 (2003). Hence, the only issue at hand is the constitutional principle of due process, which requires that FREDRICK have minimum contacts with Nevada, "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

There are two types of personal jurisdiction that can be established by a defendant's minimum contacts with a forum: specific or general. Plaintiff does not

1 submit that general jurisdiction exists in the case at bar, based on information known by
2 the Plaintiff.

3 **B. The Court Has Specific Jurisdiction Over Defendant Fredrick.**

4 Specific jurisdiction is established here by application of a three-part test: (1)
5 FREDRICK must have performed some act or consummated some transaction with the
6 forum by which he purposefully availed himself of the privilege of conducting business in
7 Nevada ("purposeful availment"); (2) ST. MATTHEW'S claims directed at FREDRICK
8 must arise out of or result from his forum-related activities; and (3) the exercise of
9 jurisdiction must be reasonable. *Rio Properties, Inc. v. Rio International Interlink*, 284
10 F.3d 1007, 1019 (9th Cir. 2002), *citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462,
11 475 (1985); *Haisten v. Grass Valley Med. Reimbursement Fund*, 784 F.2d 1392, 1397
12 (9th Cir. 1986).

13 **1. Defendant Fredrick Has Purposefully Availed Himself of the Privilege**
14 **of Conducting Business in the State of Nevada.**

15 Contrary to Defendant's assertions, Plaintiff has alleged far more wrongdoing on
16 the part of FREDRICK and his co-defendants than "the simple action of incorporating an
17 entity in Nevada[.]" Mot., p. 5, line 5. Plaintiff has clearly plead the following acts on the
18 part of FREDRICK, amongst others:

19 - That FREDRICK actually did, or conspired to, fraudulently incorporate
20 Defendant AAIMG with the State of Nevada, and later acted to maintain that corporation
21 in Nevada;

22 - That FREDRICK did, or conspired to, create or adopt false identities (including
23 email addresses) which were posited as the officers of that corporation, representing
24 those identities to be in the State of Nevada;

25 - That FREDRICK conspired to and did use those fraudulent Nevada identities to
26 commit a variety of criminal and tortious acts with the intent and effect of injuring
27 Plaintiff, in Nevada and elsewhere, including operating Internet service accounts using
28 the Nevada identities;

1 - That FREDRICK and his co-conspirators operated a website purporting to
 2 represent a business located in and operating out of Nevada, and inviting
 3 correspondence and communication there served by a mail box service retained in the
 4 State;

5 - That FREDRICK did and conspired to use a Nevada mailing address and mail
 6 box service to conduct fraudulent mailings designed to advertise and promote the
 7 "AAIMG.com" website and the other false and harmful statements of FREDRICK and the
 8 other Defendants elsewhere;

9 - That FREDRICK's acts, and those of his co-conspirators and co-defendants,
 10 committed within and directed towards the State of Nevada served and were intended to
 11 hide his identification and location from Plaintiff, from other targets of his wrong-doing,
 12 and from investigatory agencies of the State.

13 (FAC, ¶¶ 65-67.)

14 Every fraudulent, wrongful, and tortious act alleged by Plaintiff against
 15 FREDRICK stems from FREDRICK's tortious acts committed in, directed towards, or
 16 with knowing effect in, the State of Nevada. In all these ways, Defendant FREDRICK
 17 purposefully availed himself of the benefits of doing business in the State of Nevada and
 18 under its laws, abusing both in the process of furthering his tortious and criminal acts.
 19 Far beyond the "passive website" discussed in the single case he cites in support
 20 (*Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-20 (9th Cir. 1997)¹), here the
 21 wrongs alleged far exceed a foreign web presence and include acts directed at and
 22 occurring in the State of Nevada.² In fact, in a more recent case discussing *Cybersell*,

23 ¹ In *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-20 (9th Cir. 1997), the Ninth
 24 Circuit found no specific jurisdiction over a website advertiser, only where they had done
 25 nothing other than register a domain name and post an essentially passive website, and
 had done nothing to encourage residents of the forum state to access its site or to
 promote interaction with the forum state – unlike here.

26 ² "Nor is there a requirement that nonresident defendants have entered the forum state,
 27 especially given instantaneous interstate electronic transmissions. Courts have found
 sufficient minimum contacts to exercise specific jurisdiction over a case or controversy
 arising from electronic contacts. . . . The fact that no defendant ever set foot in the
 28 forum state was irrelevant. The "footfalls" were not physical; they were electronic. They
 were, nonetheless, "footfalls." And, the level of Internet activity was significant. The e-

the Ninth Circuit upheld the District Court's finding of personal jurisdiction in a case with even fewer contacts than the present one, where a defendant operated a website concerning the Las Vegas, Nevada area, and conducted activities designed to draw attention to that website, such as print advertising. *Rio*, 284 F.3d at 1020-1021.

2. FREDRICK'S Affidavit is Insufficient to Refute Plaintiff's Allegations.

As cited above, for the purposes of determining personal jurisdiction, all allegations in Plaintiff's FAC must be taken as true. Furthermore, any contradictions of fact must be resolved in favor of ST. MATTHEW'S as the non-moving party. Section I.A, *supra*.

FREDRICK's affidavit offered in support of his motion to dismiss for lack of personal jurisdiction contains only two statements of fact pertinent to this discussion: that he resides in Florida, and that he has only traveled to the State of Nevada twice. See Affidavit of David L. Fredrick ("Fredrick Aff."), ¶¶ 2, 3. As discussed above, neither have any bearing upon Plaintiff's allegations supporting personal jurisdiction.

The remainder of FREDRICK's Affidavit, directed at the allegations at issue, are purely conclusory statements and "categorical" denials, and offer no assertions of fact that would serve to contradict Plaintiff's specific allegations. See Fredrick Aff., ¶¶ 4-5. As such, they should be disregarded in any contemplation of the merits of Defendant FREDRICK's motion.

3. Notwithstanding the Insufficiency of FREDRICK'S Affidavit, Such Affidavit is Contradicted By Evidence, Which Must Be Resolved in Favor of ST. MATTHEW'S.

While the allegations in the FAC are completely sufficient without the need for Plaintiff to make any evidentiary showing regarding FREDRICK's contacts with Nevada, Plaintiff does submit, as exhibits to this opposition, limited excerpts from responses to

mails were numerous and continuous over a period of months. The purpose of that activity had been for defendants and plaintiff to unite in a joint venture to capitalize production of certain medical devices. Without question, defendants reached beyond the boundaries of their own states to do business in the forum state. Therefore, it was not unreasonable for them to be haled into the forum state." *Resuscitation Technologies, Inc. v. Continental Health Care Corp.*, 1997 WL 148567 (S.D. Ind. 1997).

the pre-service discovery efforts of Plaintiff. Such limited excerpts reveal “smoking gun” evidence of FREDRICK’s active involvement a) in the fraudulent management and operations of AAIMG, and b) the use of the Nevada corporation as a vehicle for the fraudulent activity of the Defendants.

As Plaintiff alleges that, except for defamatory mass postal mailing campaigns, the exclusive method of communications for AAIMG, for both corporate and operational matters, was through two Microsoft Hotmail email addresses (presaaimg@hotmail.com, and execsecaaimg@hotmail.com), and one Yahoo! email account (aaimg@yahoo.com). FAC ¶ 57-64.

The only address provided on the AAIMG website was that of Defendant AAIMG’s resident agent and paid mail forwarding box, Val-U-Corp – in Carson City, Nevada. FAC ¶ 49.

In response to Plaintiff’s subpoena, Microsoft and Yahoo! provided years of login records for all three of these free email accounts. These login records contained dates, times and Internet Protocol (IP) address numbers evidencing the exact Internet computer connection used to access the Hotmail email accounts. See Exhibit A, attached hereto.

The IP addresses are owned by a variety of Internet access providers, most of which keep detailed records on the accounts logging in, the exact telephone numbers used to dial up to the access provider, and other information. Exhibit B, attached hereto, is one example of an Internet access provider who owns IP addresses which were used by the Defendants when they logged in to their Hotmail accounts. This Exhibit B shows that the account name in this particular instance was saba@tiac.net, and the phone number used to dial up to the Internet was (978) 632-6836.

Responses to subpoenas to the Internet service provider that provides this email address showed that the account saba@tiac.net is an EarthLink dial-up ISP account owned by Defendant David Fredrick and Saba University. See Exhibit C hereto. Further responsive documents show that the phone number used to access the account in that

particular instance, (978) 632-6836, is located at the residence of Defendant David Fredrick, and is held in the name of FREDRICK's wife, Defendant HOUGH. See Exhibits D & E hereto.

This example is just one of hundreds of documented instances linking use of FREDRICK's and HOUGH's personal residence, phone line, and Internet Service accounts to that of the email accounts presaaimg@hotmail.com, execsecaaimg@hotmail.com, and aaimg@yahoo.com, used by the Defendants in connection with their AAIMG-related activities for over five years, as detailed in ST. MATTHEW's FAC. See, *generally*, FAC ¶ 57-64.

Such evidence is far beyond the requisite prima facie showing of Defendant FREDRICK's contacts with the State of Nevada sufficient for establishing personal jurisdiction.

4. Plaintiff's Claims Clearly Arise Out of Defendant's Forum-Related Activities.

As to the second prong of this District's test for establishing personal jurisdiction, the argument FREDRICK makes is to echo the same argument he made against the "purposeful availment" prong, discussed above. See Mot., pp. 5-6. However, as explained above, FREDRICK's gross understatement of the wrongs alleged to have been committed within and directed towards Nevada omits recognition that all injuries alleged relate to and arise from Defendants' mailings, web advertising, identities, and fraudulent corporate shield, all established in the State of Nevada. *Supra*, I.B.1. In that Plaintiff would not have been injured "but for" this conduct of Defendants in Nevada, these uncontroverted and established factual allegations prove the second prong of personal jurisdiction in favor of Plaintiff. See *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir 1998).

5. Exercise of Jurisdiction Over FREDRICK is Reasonable.

Likewise, the last prong for personal jurisdiction test weighs in favor of the Plaintiff. The exercise of jurisdiction is reasonable if it comports with traditional notions of fair play and substantial justice. In determining reasonableness, seven factors are

considered: (1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. See *Rio*, 284 F.3d at 1020, *citing Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1488 (9th Cir. 1993). As no single factor is dispositive, a court must balance all seven. See *id.*

A majority of these factors weigh strongly against FREDRICK and in favor of Plaintiff. Plaintiff has shown and alleged that FREDRICK committed elaborate and extensive fraud over the course of years specifically and purposefully to interject himself into Nevada, and wrongfully enjoy the resulting benefits. Also, in that FREDRICK has purposely abused the laws of the State of Nevada, has committed fraud against the State, and has used the *imprimatur* of the State of Nevada as a mask for crimes and torts, the State of Nevada has a hugely compelling interest in adjudicating this dispute, unparalleled by any other jurisdiction – that FREDRICK asserts Nevada has “no interest” is preposterous. See Mot., p. 6, lines 24-25; p. 7, lines 9-12. Furthermore, as the fraudulent incorporation and document-based frauds alleged are primarily occurring in the State of Nevada, most evidence is present here and this District promises the most efficient judicial resolution of the controversy.

The remaining factors weigh decidedly in favor of the Plaintiff. Any extent to which FREDRICK may be burdened by defending the case in Nevada is far outweighed by the purposefulness and character of his intentionally interjection into this District's jurisdiction; additionally, FREDRICK would be similarly burdened defending in any judicial district in the United States. FREDRICK addresses no germane conflict that exists between the sovereignty of his various home states and Nevada. Finally, while FREDRICK notes the potential alternative forums of Maine, of foreign nations in the Caribbean, or of one of his two states of residence (Florida), none of the reasons

provided are rational, let alone compelling in light of the great focus of this case, factually and procedurally, in the District of Nevada. In sum, the factors weigh overwhelmingly in favor of the reasonable exercise of personal jurisdiction over Defendant FREDRICK in Nevada.

II. PLAINTIFF HAS PLEAD SUFFICIENT FACTS FOR VENUE TO LIE IN THE DISTRICT OF NEVADA

As to the motions of Defendants FREDRICK, HOUGH and AAIMG to dismiss Plaintiff's complaint pursuant to Rule 12(b)(3) for improper venue, or for *forum nonconveniens* (for the immediate section, the "Motions")³, Plaintiff hereby opposes as follows:

In federal question cases, like the present case, the Plaintiff may bring an action in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C § 1391(b)(2). Importantly, when Plaintiff filed its first complaint, with an accompanying *ex parte* motion for discovery, perhaps the only district in the United States where venue would be appropriate was Nevada. As discussed above, the then anonymous and yet to be identified defendants had funneled all of their fraudulent acts through a Nevada corporation and Nevada mail forwarding service and address, which forwarded mail to an offshore location. Addresses on letters, the address on the website, the address of all corporate officers of AAIMG all were the address of the Nevada mail forwarding company. Fees were paid through these Nevada-based identities to the Secretary of the State of Nevada and to the Carson City mail forwarding service to maintain the Defendants' Nevada presence as the only connection to the United States both publicly and privately. Notably, documents and signatures were forged and submitted to the Secretary of State of Nevada, and forged signatures on credit card authorizations enabled payments to the Secretary of State of Nevada and the mail forwarding service. FAC ¶¶ 48-64 (restating facts from the initial

³ For ease of reference, page numbers refer to Defendant FREDRICK's version of the Motions.

1 Complaint). Significant fraudulent acts occurred in Nevada, and at the time of filing of
2 the initial complaint, Nevada was the only option for venue.

3 The *ex parte* discovery efforts of the Plaintiff revealed that the all of the named
4 officers of AAIMG were in fact fictitious and/or assumed, and the true parties controlling
5 and operating the fraudulent scheme of AAIMG are Defendants FREDRICK and
6 HOUGH, among others. FAC ¶¶ 65-67. As a result, the Plaintiff filed its FAC to name
7 FREDRICK and HOUGH, both of whom are parties to the present Motion. The FAC
8 alleges that all of the fraudulent activity that occurred in the State of Nevada, including
9 forged documents submitted to the Secretary of State and using the Nevada corporation
10 as a mechanism to shield their fraud and true identities from the world, was committed
11 by Defendants FREDRICK and HOUGH through their Nevada identities, in conjunction
12 with the other Defendants, again confirming Nevada as the most appropriate venue. *Id.*
13 Accordingly, venue is proper not only for Defendant AAIMG but also for Defendants
14 FREDRICK and HOUGH, who controlled and operated AAIMG.

15 In the Defendants' argument that venue is not proper, they seem to make a *forum*
16 *nonconveniens* argument, although it is not labeled as such. Notably, the Defendants
17 have not detailed any private or public interest factors that are required in a *forum non*
18 *conveniens* argument. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241, fn.6.

19 Simply put, the Defendants' request for a dismissal due to improper venue is
20 without merit, and accordingly Defendants' request to dismiss for lack of venue should
21 be denied.

22 **III. PLAINTIFF ST. MATTHEW'S HAS STANDING TO SUE UNDER SECTION** 23 **43(a) OF THE LANHAM ACT (15 USC §1125(a))**

24 As to the motions of Defendants FREDRICK, HOUGH and AAIMG to dismiss
25 Plaintiff's Second and Third Claims for Relief under Section 43 of the Lanham Act
26 pursuant to Rule 12(b)(6) (for the immediate section, the "Motions")⁴, Plaintiff hereby
27 opposes as follows:

28 ⁴ For ease of reference, page numbers refer to Defendant FREDRICK's version of the
Motions.

A. Foreign Nationals Unequivocally Have Standing To Sue Under Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)).

By the explicit wording in the statute and under years of clear case law, foreign nationals have standing to sue under Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)). The statute reads, in pertinent part:

Any person who, on or in connection with any goods or services, ... uses in commerce ... any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 USC §1125(a)(1)(*emphasis added*). Section 39 of the Lanham Act also specifically grants federal district courts original jurisdiction over causes of action under the Lanham Act regardless of the citizenship of the parties. 15 U.S.C. §1121(a). Accordingly, by the express terms of the statute and the express jurisdiction grant of the statute, “any person,” including a foreign national, may sue under this section.

Moreover, Section 45 of the Lanham Act (15 U.S.C. §1127) provides several definitions that clarify further the right of foreign nationals under the Act. Specifically, the “term ‘person’ and any other word or term used to designate the applicant or other entitled to a benefit or privilege ... of ... [the Lanham Act] ... includes a juristic person as well as a natural person. The term ‘juristic person’ includes a firm, corporation, union, association or other organization capable of suing and being sued in a court of law.” 15 U.S.C. § 1127; see *also*, 4 Callman, Unfair Competition, Trademarks and Monopolies

§ 100.1(a), at 844 (3d Ed. 1970)⁵ (“In general, foreigners can claim the same rights and are subject to the same duties as citizens” under the trademark laws.)

In addition to the clear statutory language, courts have also uniformly held that foreign plaintiffs have standing to sue United States nationals under Section 43(a). *Noone v. Banner Talent Associates, Inc.*, 398 F.Supp. 260, 262 (D.C.N.Y. 1975) (“By its express terms, therefore, the section [Section 43(a) of the Lanham Act] does not limit its applicability to nationals of the United States.”); *L'Aiglon Apparel v. Lana Lobell, Inc.*, 214 F.2d 649, 650 (3d Cir.1954)(“Section 39 [of the Lanham Act] gives federal district courts jurisdiction of causes arising under this statute regardless of the amount in controversy or the citizenship of the litigants.”); *Scotch Whiskey Association v. Barton Distilling Company*, 338 F.Supp. 595, 598-599 (N.D.Ill.1971), *aff'd*, 489 F.2d 809 (7th Cir. 1973) (holding that foreign plaintiff had standing both under Section 43(a) due to activity in commerce in the United States, and under Section 44 due to violation of laws through the Paris Convention); *Spartan Chemical Co., Inc. v. Atm Enterprises*, 1986 WL 2616 (N.D. Illinois 1986) (“The general rule is that foreign nationals have standing to sue United States nationals under Section 43(a).”)⁶; *Menendez v. Faber, Coe & Gregg, Inc.*, 345 F.Supp. 527, 558 (S.D.N.Y.1972), modified on other grounds, 485 F.2d 1355 (2d Cir. 1973); see also, “Standing to Bring False Advertising Claim or Unfair Competition Claim Under §43(a)(1) of Lanham Act (15 U.S.C.A. 1125(a)(1)),” 124 ALR Fed 189, § 22 (containing examples confirming the standing of foreign nationals to sue under §43(a) as long as foreign plaintiff is engaged in interstate commerce in the United States).

The case of *West Indian Sea Island Cotton Ass'n Inc. v. Threadtex, Inc.* offers further support for basic proposition that foreign nationals have a right to sue under Section 43(a). 761 F.Supp. 1041 (S.D.N.Y. 1991). In *West Indian*, just like in the present case, the plaintiff was a foreign national, and the US defendant argued that the

⁵ An updated reference is 4A Callman, Unfair Competition, Trademarks and Monopolies § 27:26 (4th Ed. 1981).

⁶ A copy of this case, reported on Westlaw, is attached hereto in Exhibit F.

1 plaintiff, as a foreign national, lacked standing to sue under Section 43(a). *Id.* at 1048.
 2 However, the court held that the foreign national defendant did indeed have standing
 3 under Section 43(a), because the foreign national had a "reasonable commercial interest
 4 to be protected" in the United States. *Id.* In fact, the court explained that the only
 5 requirement is for a foreign national plaintiff is to show "a reasonable basis for the belief
 6 that [it] is likely to be damaged as a result of the false advertising." *Id.* at 1049 (*quoting*
 7 *Johnson & Johnson v. Carter-Wallace, Inc.*, 631 F.2d 186, 190 (2d Cir.1980)). In the
 8 present case, Plaintiff has alleged significant damage in the United States to Plaintiff's
 9 interests here, resulting from, among other actions, the Defendants' false advertising in
 10 the United States. Therefore, Plaintiff, under clear and consistent case law, has
 11 standing to sue Defendants under Section 43(a) of the Lanham Act.

12 **B. Plaintiff ST. MATTHEW'S has Alleged Unlawful Actions of**
 13 **Defendants That Are "In Commerce" in the United States, Placing Plaintiff's**
 14 **Allegations Squarely Within the Purview of Section 43(a) of the Lanham Act.**

15 As detailed above, the Section 43a of the Lanham Act creates a cause of action if
 16 "[a]ny person who, on or in connection with any goods or services, ... uses in commerce
 17 ... any false designation of origin, false or misleading description of fact, or false or
 18 misleading representation of fact, which –" creates a false designation or origin or is
 19 makes a misrepresentation in commercial advertising. 15 § U.S.C. 1125(a) (*emphasis*
 20 *added*). Plaintiff ST. MATTHEW'S has clearly alleged acts "in commerce" for the
 21 purpose of triggering jurisdiction under Section 43(a), in addition to great harm suffered
 22 by Plaintiff within the United States. Plaintiff has alleged that Defendants formed a
 23 corporation in Nevada and proceeded to use that corporation as the fulcrum of an
 24 elaborate fraudulent scheme to spread falsehoods throughout the United States to
 25 accrediting bodies, teaching hospitals, medical educators, student loan providers and
 26 administrators, administrators of teaching hospitals, all without revealing the true
 27 identities of Defendants as competitors of Plaintiff. FAC ¶ 69. Additionally, Plaintiff has
 28 alleged that it has applied for an received accreditation or recognition in 48 of the 50 US

1 states, has clinical locations throughout the United States, and recruits students from the
2 United States. FAC ¶¶ 19-25.

3 Plaintiff has therefore sufficiently alleged that the unlawful actions of the
4 Defendants occurred “in commerce” for the purpose of Section 43a of the Lanham Act.

5 **C. Plaintiff ST. MATTHEW’S Has Never Alleged a Cause of Action**
6 **under 15 USC § 1126(b) & (h) as Defendants Infer.**

7 Defendants in their Motions refer multiple times, including in a section heading, to
8 the Plaintiff’s allegations under 15 USC § 1126(b) & (h) (Section 44 of the Lanham Act,
9 which is entitled, “International Conventions”). (Mot., p. 10) However, Plaintiff ST.
10 MATTHEW’S has never alleged any cause of action whatsoever under 15 U.S.C.
11 § 1126. In fact, in the captions for Plaintiff’s claims for relief and in the descriptions
12 thereunder, Plaintiff alleges its claims specifically under 15 U.S.C. §1125(a) (Section 43
13 of the Lanham Act). Specifically, the second claim for relief in the FAC explains the
14 allegations, “in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).”
15 (FAC ¶ 99.) The third claim for relief in the FAC explains the allegations “in violation of
16 Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. §1125(a)(1)(B).” (FAC ¶ 103.)
17 Importantly, nowhere has the Plaintiff alleged any cause of action under 15 U.S.C.
18 § 1126 as the Defendants state and argue in their Motions.

19 For these reasons, all of the Defendants’ arguments regarding the Lanham Act
20 should be rejected as irrelevant. In the *Noone* case, cited *supra*, the Defendants used
21 an almost identical tactic, which was also rejected by the court. In *Noone*, the plaintiff, a
22 British citizen, sued under Section 43a (15 U.S.C. §1125(a)) for acts occurring in
23 commerce in the United States, and the defendants, also British citizens, argued that
24 there was no jurisdiction under Section 44 (15 U.S.C. §1126). *Noone*, 398 F.Supp. at
25 262. The court explained how the arguments regarding Section 44 were irrelevant,
26 because a cause of action under Section 43a was alleged, not under Section 44. *Id.*

D. Section 44 of the Lanham Act (15 USC § 1126) Relates to Protection for Trademarks Registered in Foreign Countries, and Is Inapplicable to the Case at Hand.

Section 44 of the Lanham Act (15 U.S.C. § 1126), labeled “International Conventions,” was designed for the specific purpose of providing protection to foreign nationals who have trademarks filed in their own countries and face trademark infringement or unfair competition occurring in commerce in the United States. This statute lays out the specific procedure and rights conferred, if a foreign national is from a country that has treaty with the United States that requires US “national treatment” for foreign plaintiffs and foreign trademarks, within the United States. *International Café, S.A.L. v. Hard Rock Café Intern. (U.S.A.), Inc.*, 252 F.3d 1274, 1278 (11th Cir. 2001); *See also*, for a general explanation, *Vanity Fair* at 644. Importantly, under a straightforward reading of the statute and the above cited case law, “unfair competition,” as referenced in § 1126(h) of the statute, refers to protection of foreign nationals, in the United States, from unfair competition as defined by the laws of their home countries and made applicable in the United States through international treaties and conventions.

Thus, the arguments based on “unfair competition” under § 1126(h) and on which Defendants rely in their Motions are completely irrelevant and inapplicable to Plaintiff’s claims under § 1125(a). In fact, a foreign plaintiff can actually plead and prove causes of action under both § 1125(a) and § 1126 at the same time, the former based upon false advertising or false designation of origin in the United States, and the latter based upon foreign laws trademark rights applicable in the United States by treaty. Ironically, Defendants cite to the case of *Scotch Whiskey Association v. Barton Distilling Company*, 338 F.Supp. 595, 598-599 (N.D.Ill.1971), *aff’d*, 489 F.2d 809 (7th Cir. 1973), for the proposition that a foreign national may only proceed under § 1126; however, a close reading of the district court’s decision reveals that the court allowed the foreign plaintiff to proceed on both an § 1125(a) cause of action and an § 1126 cause of action at the same time. *See Scotch Whiskey*, 338 F.Supp. 598.

IV. PLAINTIFF ST. MATTHEW'S HAS SUFFICIENTLY PLEAD A CAUSE OF ACTION UNDER THE NEVADA DECEPTIVE TRADE PRACTICE ACT

As to the motions of Defendants FREDRICK, HOUGH and AAIMG to dismiss Plaintiff's Fifth Claim for Relief under Nevada's Deceptive Trade Practices Act pursuant to Rule 12(b)(6) (for the immediate section, the "Motions")⁷, Plaintiff hereby opposes as follows:

Defendants have moved to dismiss Plaintiff's Fifth Claim for Relief for failure to state a claim pursuant to Rule 12(b)(6). Mot., p. 13. Defendants assert that Plaintiff cannot state a claim for relief under the Nevada Deceptive Trade Practice Act, N.R.S. § 598 ("NDTPA"), on the grounds that the NDTPA "generally provides for a public cause of action."⁸ Mot., p. 13. In support, Defendants cite *Nevada Power v. Eighth Dist. Court*, 102 P.3d 578 (2004), falsely claiming that case has the Nevada Supreme Court "decline[ing] to recognize a private cause of action under that statute." *Id.*

Defendants' argument lacks merit and is false representation of the case law cited. The NDTPA contains no language expressly restricting private causes of action for violations arising under the statute. In fact, N.R.S. § 598.0953 mentions the individualized harm to competitors caused by violations of NDTPA, and does not limit available remedies to public actions. The statute states:

1. Evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

2. The deceptive trade practices [598.0915-598.0925 inclusive] are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this state.

N.R.S. § 598.0953 (emphasis added).

⁷ For ease of reference, page numbers refer to Defendant FREDRICK's version of the Motions.

⁸ Defendants have erroneously cited to Plaintiff's Fifth Claim for Relief as arising under "N.R.S. 598(3),(5), (7) and 15." In actuality, Plaintiff has plead claims arising under N.R.S. § 598.0915 (3),(5),(7) and (15). Plaintiff was unable to locate the provisions cited by Defendant, therefore Plaintiff assumes they do not exist and that Defendants referred to these provisions in error.

1 Furthermore, N.R.S. § 41.600 expressly authorizes a private cause of action in
 2 this case. §41.600(1) reads “an action may be brought by any person who is a victim of
 3 consumer fraud.” (*emphasis added*). Under §41.600(2)(d), “consumer fraud” includes “a
 4 deceptive trade practice as defined in NRS 598.0915 to 598.0925 inclusive.” (*emphasis*
 5 *added*) Section 41.600(3) provides a successful claimant: (a) any damages he has
 6 sustained, and (b) his costs in the action and reasonable attorneys fees. *Id.*

7 Even Defendants’ cited case law is contrary to Defendants’ position. In *Nevada*
 8 *Power*, the Supreme Court of Nevada recognized that “NRS 41.600 ... provides for a
 9 private cause of action by a person who is a victim of consumer fraud.” 102 P.3d at 583,
 10 nt. 7. The Court defines consumer fraud to include “a deceptive trade practice as in
 11 NRS 598.0915 to 598.0925.” This language authorizing private NDTPA actions in
 12 Nevada Power came from the same footnote cited by Defendants, in arguing such a
 13 cause of action does not exist and that the Nevada Supreme Court had declined to
 14 recognize such a right. See Mot. at p. 13.

15 Given this unambiguous statutory authority and Nevada Supreme Court holding,
 16 it is inexplicable how Defendants came to the opposite conclusion in their motions to
 17 dismiss. There is no statutory authority or case law suggesting Plaintiff was barred from
 18 making a private claim under the NDTPA. In fact, Plaintiff was expressly authorized to
 19 make such a claim.

20 Defendants further argue that Plaintiff “fails to allege any conduct within the
 21 constitutional reach of the [NDTPA].” Defendants assert that in order for a claim under
 22 NDTPA to go forward, Plaintiff must allege specific acts of harm occurred within the state
 23 of Nevada. Again, Defendant’s argument lacks merit. Defendants’ supporting case
 24 law, *White v. Ford Motor Co.*, 312 F.3d 998, 1016 at n.68, is a Ninth Circuit case dealing
 25 with punitive damages and not relevant to the primary harms caused by Defendants in
 26 this action.

27 Despite Defendants’ assertions, it is well established that a court with proper
 28 personal and subject matter jurisdiction over a defendant can adjudicate claims based

on the law of the forum state. Defendants' business and corporate façade is a Nevada corporation, and Defendants have committed acts directed at and within the State of Nevada, as discussed above. As such, Defendants are subject to the provisions of the Nevada Revised Statutes, including deceptive trade practices under §598.0915.

V. PLAINTIFF ST. MATTHEW'S HAS SUFFICIENTLY PLEADED A CAUSE OF ACTION UNDER THE CALIFORNIA COMPUTER CRIMES ACT

As to the motions of Defendants FREDRICK, HOUGH and AAIMG to dismiss Plaintiff's Sixth Claim for Relief under the California Computer Crimes Act pursuant to Rule 12(b)(6) (for the immediate section, the "Motions")⁹, Plaintiff hereby opposes as follows:

Defendants make three arguments why the Plaintiff has not pleaded a cause of action under the California Computer Crimes Act ("CCCA"). First, Defendants argue that a conviction under the CCCA is a prerequisite for a private right of action; second, that there was no allegation of injury or impact in the State of California; and third, that no ownership of a computer network is alleged. Plaintiff's will address each argument in turn.

A. Defendants Refer to a Superseded Section of the California Computer Crimes Act in Arguing that a Conviction is a Prerequisite to a Private Right of Action.

Simply put, there is no requirement that a defendant has been convicted under CCCA in order for a plaintiff to file a civil action against a defendant under the CCCA. Defendants quote an outdated and superseded section of the CCCA in support of their argument: "(e)(1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including" Mot. at p. 14 (*emphasis added*). However, this code section was superseded on in 2000 by the following provision: "(e)(1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer

⁹ For ease of reference, page numbers refer to Defendant FREDRICK's version of the Motions.

1 network, computer program, or data who suffers damage or loss by reason of a violation
 2 of any of the provisions of subdivision (c) may bring a civil action against the violator for
 3 compensatory damages and injunctive relief or other equitable relief.” California Penal
 4 Code § 502(e)(1)(emphasis added); see California Stats.2000, c. 635
 5 (A.B.2727)(amending § 502(e)(1) to remove the requirement of a conviction).

6 As evidenced by a simple reading of the statute, the Defendants cited an
 7 outdated and superseded version of the statute, and in the current version of the statute,
 8 there is no requirement of a conviction prior to a private cause of action.

9 **B. Plaintiff Has Alleged Sufficient Facts Involving Fraud Under the**
 10 **California Computer Crimes Act to Support a Civil Cause of Action.**

11 The CCCA allows for multiple types of civil remedies for unlawful activity under
 12 the statute, as evidenced by the language, “[i]n addition to any other civil remedy
 13 available... .” Cal. Penal Code § 502(e)(1). Section 502(e)(1) specifically allows a form
 14 of restitution for computer owners who are harmed due to violations of the CCCA, which
 15 is in addition to any other civil remedy available, as evidenced by the specific language
 16 of the statute. Whether it is through the protection of Section 17200, or a stand-alone
 17 allegation under the CCCA, there are clearly multiple types of civil remedies available to
 18 those suffering damages as a result of the violation of the CCCA. See *People v.*
 19 *McKale*, 25 Cal.3d 626, 633 (Cal. 1979)(citing *People v. K. Sakai Co.*, 56 Cal.App.3d
 20 531 (1976), for the proposition of using violations of criminal laws for the basis of unfair
 21 competition actions).

22 **C. Plaintiff Has Alleged Sufficient Facts Related to the State of California.**

23 Defendants state that Plaintiffs do not allege any injury in the State of California
 24 or other impact on California. Motion, p. 14. However, Plaintiff specifically alleges in the
 25 FAC that the Yahoo! and Hotmail email servers, which were important instruments in the
 26 perpetration of much of the unlawful activity throughout the complaint, are located in
 27 California. FAC, p. 15, nt. 7. To use the Yahoo! and Hotmail email addresses as the
 28 Defendants did, Defendants necessarily had to enter false information (i.e. fake names,

1 fake contact information) into the servers located in California, which clearly subjects
2 them to liability under the CCCA. *People v. Gentry*, 285 Cal.Rptr. 591, 234 Cal.App.3d
3 131, 140-141 (App. 4 Dist. 1991), *review denied*.

4 Additionally, the CCCA addresses the situation of a defendant accessing from
5 outside of California a computer located in California. Specifically, “[f]or purposes of
6 bringing a civil or a criminal action under this section, a person who causes, by any
7 means, the access of a computer, computer system, or computer network in one
8 jurisdiction from another jurisdiction is deemed to have personally accessed the
9 computer, computer system, or computer network in each jurisdiction.” California Penal
10 Code § 502(j). Thus, under the specifically language in the statute, the Defendants have
11 accessed a computer in California even though Defendants may not have been
12 physically present in California.

13 For the forgoing reasons, Plaintiffs have pled sufficient facts for a cause of action
14 under the California Computer Crimes Act.


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1 **FOR THE FOREGOING REASONS**, Defendants' motions to dismiss Plaintiff's
2 First Amended Complaint pursuant to Rules 12(b)(2), (3) and (6) should be DENIED.

3
4 Respectfully Submitted,

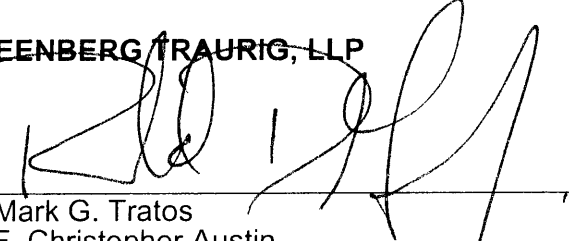
5
6 DATED: March 6, 2006.

KRONENBERGER HANLEY, LLP

7
8 By: 
9 Karl S. Kronenberger
10 Terri R. Hanley
11 Attorneys for Plaintiff
12 ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD.

13
14 DATED: March 6, 2006.

GREENBERG TRAURIG, LLP

15
16 By: 
17 Mark G. Tratos
18 F. Christopher Austin
19 Ronald D. Green, Jr.
20 Designated Local Counsel for Plaintiff
21 ST. MATTHEW'S UNIVERSITY (CAYMAN) LTD.

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Exhibit A

**Subpoena Response from Microsoft (Hotmail)
(excerpted and annotated)**

User Info	
Field	Value
Login	presaaimg@hotmail.com
First Name	thomas
Last Name	moore
State	Nevada
Zip	89706
Country	US
Timezone	America/Denver
Registered from IP	149.152.89.168
Date Registered	10/25/2000 9:04:13 AM
Reply To Address	presaaimg@hotmail.com
This Account Forwards to the Following Accounts	
Accounts Forwarding to This Account	
Init Locale	EN_US

MS/SUB
Confidential 0154

Passport
Personal
Information

First Name: thomas
 Last Name: moore
 Gender: Male
 E-mail: presaaimg@hotmail.com
 Occupation: Professional (medical, legal, etc.)
 BirthDate: 4/4/1930
 Country: United States
 State/Region: Nevada
 Postal Code: 89706
 Timezone: Mountain Time - MST
 Language Pref: English

Sign In Summary
Descriptions

Create Time GMT
 Last Change Time GMT
 Credential Type Stanard = Password; Mobile = PIN Number; Secure = Credentials
 Action Login Success or failure
 Value New lines are added each time Action or IP address or Site logged into
 changes. Value counts each time logged in where these remain unchanged
 IP Address IP Address of Login

Auth IP History

Create Time	Last Change Time	Credential Type	Action	Value	IP Address
5/13/2005 15:36	7/24/2005 3:13	Standard Credential	Login Success	42	4.154.255.57
5/2/2005 18:00	5/17/2005 21:32	Standard Credential	Login Success	7	209.239.73.242
5/2/2005 17:46	5/2/2005 17:46	Standard Credential	Login Failure	1	4.156.39.229
11/20/2004 20:41	4/29/2005 4:19	Standard Credential	Login Success	78	4.156.150.48
10/25/2000 16:04	10/25/2000 16:04	Standard Credential	Create Credential	N/A	N/A

MS/SUB
 Confidential 0160

User Info	
Field	Value
Login	execsecaimg@hotmail.com
First Name	sarah
Last Name	weinstein
State	Nevada
Zip	89706
Country	US
Timezone	America/Los_Angeles
Registered from IP	149.152.89.168
Date Registered	10/25/2000 9:20:20 AM
Reply To Address	execsecaimg@hotmail.com
This Account Forwards to the Following Accounts	
Accounts Forwarding to This Account	
Init Locale	EN_US

MS/SUB
Confidential 0073

Passport
Personal
Information

First Name: sarah
Last Name: weinstein
Gender: Female
E-mail: execsecaaimg@hotmail.com
Occupation: Executive/senior management
BirthDate: 5/5/1930
Country: United States
State/Region: Nevada
Postal Code: 89706
Timezone: Pacific Time - PST
Language Pref: English

Sign In Summary
Descriptions

Create Time GMT
Last Change Time GMT
Credential Type Stanard = Password; Mobile = PIN Number; Secure = Credentials
Action Login Success or failure
Value New lines are added each time Action or IP address or Site logged into changes. Value counts each time logged in where these remain unchanged
IP Address IP Address of Login

Auth IP History

Create Time	Last Change Time	Credential Type	Action	Value	IP Address
7/17/2005 13:59	7/20/2005 18:15	Standard Credential	Login Success	5	72.252.13.88
7/17/2005 13:59	7/17/2005 13:59	Standard Credential	Login Failure	1	209.59.74.124
7/17/2005 13:56	7/17/2005 13:56	Standard Credential	Login Success	1	209.59.74.124
7/17/2005 13:56	7/17/2005 13:56	Standard Credential	Login Failure	1	209.59.74.124
7/11/2005 20:17	7/14/2005 13:36	Standard Credential	Login Success	3	209.59.74.124
7/11/2005 3:17	7/11/2005 3:17	Standard Credential	Login Failure	1	4.156.39.140
5/19/2005 13:26	7/11/2005 2:59	Standard Credential	Login Success	10	4.156.39.140
4/15/2005 4:19	5/9/2005 20:20	Standard Credential	Login Success	6	69.50.73.106
10/25/2000 16:20	10/25/2000 16:20	Standard Credential	Create Credential	N/A	N/A

MS/SUB
Confidential 0076

152.163.100.199	11/8/2004 8:19:15 PM (PST)	pass
4.156.198.245	11/10/2004 4:19:43 PM (PST)	pass
63.159.113.107	11/10/2004 4:52:35 PM (PST)	pass
4.156.120.24	11/13/2004 8:06:43 AM (PST)	pass
64.12.116.7	11/15/2004 9:39:52 PM (PST)	pass
198.81.26.11	11/16/2004 9:13:51 PM (PST)	pass
206.16.160.165	11/17/2004 9:41:57 PM (PST)	pass
206.16.160.165	11/17/2004 10:07:56 PM (PST)	pass
206.16.160.165	11/17/2004 10:09:17 PM (PST)	pass
65.120.41.53	11/20/2004 12:36:15 PM (PST)	pass
65.120.41.53	11/20/2004 12:41:20 PM (PST)	pass
65.120.41.50	11/20/2004 1:11:49 PM (PST)	pass
68.56.45.168	11/22/2004 8:32:39 AM (PST)	pass
68.56.45.168	11/22/2004 8:34:02 PM (PST)	pass
68.56.45.168	11/25/2004 2:51:36 PM (PST)	pass
68.56.45.168	11/26/2004 8:19:48 PM (PST)	pass
12.64.54.167	11/28/2004 5:03:31 PM (PST)	pass
→ 4.156.129.199	12/1/2004 9:57:07 AM (PST)	pass
→ 4.156.120.127	12/11/2004 4:02:26 AM (PST)	pass
4.156.240.166	12/11/2004 4:45:10 PM (PST)	pass
24.248.69.203	12/13/2004 6:01:25 PM (PST)	pass
24.248.69.203	12/13/2004 6:05:40 PM (PST)	pass
24.248.69.203	12/13/2004 6:06:54 PM (PST)	pass
68.16.133.2	12/14/2004 6:32:33 PM (PST)	pass
68.56.45.168	12/21/2004 9:30:34 PM (PST)	pass
204.193.127.26	12/28/2004 9:56:44 AM (PST)	pass
4.156.120.243	1/6/2005 8:41:32 PM (PST)	pass
4.232.228.12	1/6/2005 9:31:04 PM (PST)	pass
4.156.93.22	1/10/2005 9:28:04 AM (PST)	pass
4.156.96.162	1/14/2005 8:05:30 PM (PST)	pass
4.154.252.68	1/18/2005 8:04:42 PM (PST)	pass
4.232.234.231	1/18/2005 8:27:42 PM (PST)	pass
68.56.185.106	1/21/2005 9:34:09 AM (PST)	pass
68.56.185.106	1/21/2005 9:56:02 AM (PST)	pass
205.188.116.132	1/24/2005 4:36:03 PM (PST)	pass
205.188.116.69	1/24/2005 4:44:24 PM (PST)	pass
205.188.116.196	1/24/2005 4:46:37 PM (PST)	pass
205.188.117.6	1/24/2005 5:23:44 PM (PST)	pass
64.12.116.69	1/28/2005 7:57:24 PM (PST)	pass
4.156.129.154	1/30/2005 6:29:24 AM (PST)	pass
4.156.243.106	2/1/2005 4:38:21 AM (PST)	pass
4.156.243.106	2/1/2005 4:45:34 AM (PST)	pass
4.156.243.106	2/1/2005 4:50:08 AM (PST)	pass
4.156.243.106	2/1/2005 4:51:48 AM (PST)	pass
4.154.242.57	2/3/2005 7:25:10 AM (PST)	pass
4.156.243.34	2/9/2005 4:43:35 AM (PST)	pass
4.156.15.163	2/9/2005 5:30:14 AM (PST)	pass

MS/SUB
Confidential 0156

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Tel 425 882 8080
Fax 425 936 7329
<http://www.microsoft.com/>

Microsoft

CERTIFICATION OF AUTHENTICITY

I, Jonathan Bradley, state as follows:

1. I am over the age of 18, I am competent to testify regarding the matters set forth below and I make this declaration based upon personal knowledge.
2. I am one of the records custodians for Microsoft Corporation, including its Hotmail service(s) (the "Service"). I am familiar with the electronic filing system for maintaining subscriber information for the Service.
3. When a new subscriber registers for the Service, the subscriber is required to enter certain information, including the name and address of the subscriber ("Subscriber Information").
4. In the ordinary course of the Service's business, the Service maintains an electronic record of the Subscriber Information ("Subscriber Information Record"). Subscriber Information Records are made at the time that a new subscriber registers for the Service.
5. In the ordinary course of the Service's business, the Service maintains an electronic record of certain data with respect to subscriber accounts, including: registration information provided by the user and Internet Protocol Logs which list the date, time and Internet Protocol address for each account session log-in (collectively, "Subscriber Logs"). Subscriber Logs are made contemporaneously with the events that they document. Subscriber Logs are kept for a limited time and may not be available as they are deleted in the course of routine document storage maintenance.
6. In the regular course of my duties as custodian of records, I obtained a copy of the Subscriber Information Record and Subscriber Logs for the Service account(s): execsecaaimg@hotmail.com and presaaimg@hotmail.com. These records included the information in the pages labeled MS/SUB 0073-0076-0154-0160, which have been requested by civil subpoena in: *St. Matthews University v. AAIMG*.

I declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED August 22, 2005, in Redmond, Washington.

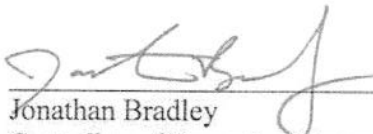

Jonathan Bradley
Custodian of Records, Microsoft Corporation

Exhibit B

**Subpoena Response from Level3 Communications
(excerpted and annotated)**

08/12/2005 01:46:48 PM

Lees, Christian

Level3Comm

Page 3

NAS-IP : 209.247.23.51

→ Framed-IP : 4.156.129.199

UserName : saba@tiac.net

CustName : earthlink

Start TS : 2004-12-01 17:51:37 UTC

Stop TS : 2004-12-01 20:20:52 UTC

Called TN : 9789194492

→ Calling TN : 9786326836

Session ID: 333683967

Earthlink Phone: 1-800-890-5128 Mail: Send certified letter to: 1375 Peachtree St., Level A, Atlanta, GA 30309

NAS-IP : 209.247.23.48

→ Framed-IP : 4.156.120.127

UserName : saba@tiac.net

CustName : earthlink

Start TS : 2004-12-11 11:51:40 UTC

Stop TS : 2004-12-11 12:21:09 UTC

Called TN : 9789194492

→ Calling TN : 9786326836

Session ID: 337630527

Earthlink Phone: 1-800-890-5128 Mail: Send certified letter to: 1375 Peachtree St., Level A, Atlanta, GA 30309

NAS-IP : 209.247.23.48

Framed-IP : 4.156.120.127

UserName : saba@tiac.net

CustName : earthlink

Start TS : 2004-12-11 11:51:40 UTC

Stop TS : 2004-12-11 12:21:09 UTC

Called TN : 9789194492

Calling TN : 9786326836

Session ID: 337630527

Earthlink Phone: 1-800-890-5128 Mail: Send certified letter to: 1375 Peachtree St., Level A, Atlanta, GA 30309

Aug-12-2005 12:53 PM
 08/12/2005 01:49:17 PM
 08/03/05 15:16 FAX 720 888 5128

Level3Comm 13/15
 Lees, Christian
 LEVEL 3 LEGAL CO

Level3Comm

Page 13
 009

GREENBERG TRAUIG LLP

Ronald D. Green, Jr. (Bar No. 7360)
 3773 Howard Hughes Parkway, Ste. 500 N
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 Tel: (702) 792-3773
 Fax: (702) 792-9002

KRONENBERGER & ASSOCIATES

Karl S. Kronenberger (CA Bar No. 226112) (*Pro Hac Vice*)
 Terri R. Hanley (CA Bar No. 199811) (*Pro Hac Vice*)
 220 Montgomery Street, Suite 1920
 San Francisco, California 94104
 Tel: (415) 955-1155
 Fax: (415) 955-1158

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

**ST. MATTHEW'S UNIVERSITY
 (CAYMAN) LTD., a Cayman Islands
 company,**

Plaintiff,

vs.

**ASSOCIATION OF AMERICAN
 INTERNATIONAL MEDICAL
 GRADUATES, INC., a Nevada
 corporation; THOMAS MOORE, M.D.
 a.k.a. "presaaimg@hotmail.com," an
 individual; SARAH B. WEINSTEIN a.k.a.
 "execsecaaimg@hotmail.com," an
 individual; and RACHAEL E. SILVER,
 an individual,**

Defendants.

Case No. CV-S-05-0848-RCJ(LRL)

**DECLARATION OF RECORDS
 CUSTODIAN**

TO BE FILED UNDER SEAL

IN CONNECTION WITH THE RULE 45 SUBPOENA SERVED HEREWITH, this
 "Declaration of Records Custodian" is hereby made and submitted for the purpose of the
 authentication of the documents and information produced in response thereto.

Sep-22-2005 03:52 PM 7208883303
09/22/05 14:56 FAX 72088833034/5
LEVEL 3 COMMUNICATIONS

004

DECLARATION OF RECORDS CUSTODIAN

The undersigned Custodian of Records declares and answers questions as follows:

1. State your name, job title, place of employment, and address.

Name:

Mike Keating

Title:

Security Operations Technician

Employer:

Level 3 Communications, LLC

Address:

1025 Eldorado Blvd

Broomfield, Colorado

80021

2. In your employment, do you have custody or control of records, documents and information sought in the subpoena served herewith?

☒ Yes. ☐ No.

3. Were these records prepared in the ordinary and regular course of business, at or near the time of the event, act or correspondence?

☐ Yes. ☒ No.

4. Have any changes or alterations in these records been made since the date of origination?

☐ Yes. ☒ No.

5. Have you provided complete and true copies of the originals of these records?

☒ Yes. ☐ No.

6. Have you omitted any records, documents, or other information responsive to the subpoena served herewith that is in the possession, custody or control of the party to whom that subpoena is directed (or its attorneys or agents)?

☐ Yes. ☒ No.

If "yes," please identify with specificity any and all documents omitted:

Sep-22-2005 03:52 PM 7208883303
09/22/05 14:56 FAX 72088833035/5
LEVEL 3 COMMUNICATIONS

005

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct to the best of my knowledge.
3

4
5 Dated: 9-22-056
7 SIGNED:

8 Michael J Keating
9 Name: Michael J Keating
10 Title: Security Operations Technician
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Exhibit C

**Subpoena Response from EarthLink
(excerpted, annotated and redacted for privacy)**

midas.internal.earthlink.net - PuTTY

fm/acctmnt.p Account Maintenance emartore 09/13/05

Account:	Saba University	Acct#:	5060106	AR:	.00
Company:	Saba University	Users:	1	Pending:	.00
				Cycle:	11 Prev: .00
Pays By:	VISA Expires	Email:	Yes	Snail:	No
		Biz Org:	el	Brand:	ELNR
Country:	USA	Bill-To Addr:	No	Security Hint:	
Address:	Attn: David Fredrick				
	PO Box 386				
City:	Gardner	St:	MA	Chg'd:	05/11/04
Zip:	01440-			By:	nielsen
Contact:	Saba University				
Email:	saba@tiac.net				
Home:	(508) 632-1838				
Wrk/Fax:					
Added:	04/24/02	Node:	level3.ma.town		

Add Bill Chg Find Hist Inac More Order Prop Rcv SpyCC User prpaY

Find Users and Accounts

midas.internal.earthlink.net - PuTTY

fm/acctmnt.p Account Maintenance emartore 09/13/05

Account:	Saba U	Method Of Payment Information	:	.00
Company:	Saba U		:	.00
			:	.00
Pays By:	VISA E	Pays By:	Credit Card	
		CC Type:	VISA	
Country:	USA	ExpDate:		
Address:	Attn:	AcctNum:	4	
	PO Box			
City:	Garden			
Zip:	01440-			
Contact:	Saba University			
Email:	saba@tiac.net			
Home:	(508) 632-1838			
Wrk/Fax:				
Added:	04/24/02	Node:	level3.ma.town	

Press space bar to continue.

GREENBERG TRAURIG LLP

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3773 Howard Hughes Parkway, Ste. 500 N
Las Vegas, Nevada 89109
Tel: (702) 792-3773
Fax: (702) 792-9002

KRONENBERGER & ASSOCIATES

Karl S. Kronenberger (CA Bar No. 226112) (*Pro Hac Vice*)
Terri R. Hanley (CA Bar No. 199811) (*Pro Hac Vice*)
220 Montgomery Street, Suite 1920
San Francisco, California 94104
Tel: (415) 955-1155
Fax: (415) 955-1158

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**ST. MATTHEW'S UNIVERSITY
(CAYMAN) LTD., a Cayman Islands
company,**

Plaintiff,

vs.

**ASSOCIATION OF AMERICAN
INTERNATIONAL MEDICAL
GRADUATES, INC., a Nevada
corporation; THOMAS MOORE, M.D.
a.k.a. "presaaimg@hotmail.com," an
individual; SARAH B. WEINSTEIN a.k.a.
"execsecaimg@hotmail.com," an
individual; and RACHAEL E. SILVER,
an individual,**

Defendants.

Case No. CV-S-05-0848-RCJ(LRL)

**DECLARATION OF RECORDS
CUSTODIAN**

TO BE FILED UNDER SEAL

IN CONNECTION WITH THE RULE 45 SUBPOENA SERVED HERewith, this
"Declaration of Records Custodian" is hereby made and submitted for the purpose of the
authentication of the documents and information produced in response thereto.

DECLARATION OF RECORDS CUSTODIAN

DECLARATION OF RECORDS CUSTODIAN

The undersigned Custodian of Records declares and answers questions as follows:

1. State your name, job title, place of employment, and address.

Name:

Esteban Martorell

Title:

Manager of Investigations

Employer:

Earthlink

Address:

1375 Peachtree

Atlanta GA 30307

2. In your employment, do you have custody or control of records, documents and information sought in the subpoena served herewith?

☒ Yes. ☐ No.

3. Were these records prepared in the ordinary and regular course of business, at or near the time of the event, act or correspondence?

☒ Yes. ☐ No.

4. Have any changes or alterations in these records been made since the date of origination?

☐ Yes. ☒ No.

5. Have you provided complete and true copies of the originals of these records?

☒ Yes. ☐ No.

6. Have you omitted any records, documents, or other information responsive to the subpoena served herewith that is in the possession, custody or control of the party to whom that subpoena is directed (or its attorneys or agents)?

☐ Yes. ☒ No.

If "yes," please identify with specificity any and all documents omitted:

Dated: 13 Sept 2005

SIGNED:

Name: _____
Title: Manager of Truck

Name: /

Title: Manuscript

Exhibit D

**Subpoena Response from Verizon
(excerpted, annotated, and redacted for privacy)**

Page: 1 Document Name: untitled

CMB
 978 632 6836 061
 PATRICIA HOUGH
 74 EDGELL
 GARDNER MA 01440

MSG
 AUG 05 05 *CSBL LIVE
 PB 0906 RT AC B-00 DEP 0
 R1 0818 EFT 704 CT DOI 060898
 R2 0831 NT P NOB TAX FS----
 R3 0906 PPD RTN
 CI NV CBR 5086305122 SELF

GDNR 1FR
 CN BD N
 LCU
 LCR
 LAL

TRT HIST 000000000000 CIV 0698
 RCK HIST 000000000000 PAH 0196
 PREV BL 32.32 CUR BL 32.29
 PAY & ADJ PREV BILL PAY & ADJ CURR BILL
 DATE T AMOUNT DATE T AMOUNT
 0805 01 32.32

NET 32.29 +
 CCG 32.29
 TOT 32.29
 RP NOTATION

CUR DUE 32.29
 TYPE PN ACT FU BD
 0805 +